TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1926

No. [redacted] 63

JACOB REED'S SONS, INC., APPELLANT,

vs.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

FILED APRIL 14, 1926

(31,031)

(31,031)

SUPREME COURT OF THE UNITED STATES

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No. 359

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APPEAL FROM THE COURT OF CLAIMS

INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 20, 1925

[fol. 1] **IN COURT OF CLAIMS OF THE UNITED STATES**

No. B-42

JACOB REED'S SONS, INC., Plaintiff,

v.

THE UNITED STATES, Defendant

I. PETITION—Filed March 18, 1922

To the Honorable the Court of Claims:

I

Plaintiff is and was during the period hereinafter mentioned, a corporation organized and doing business under the laws of the State of Pennsylvania, with its principal office and place of business in Philadelphia, in that state; and is and has been engaged in the manufacture of clothing, and uniforms, and also in the business of retailing clothing and other furnishings.

[fol. 2]

II

On and before the 15th day of July, 1918, plaintiff was manufacturing clothing, uniforms, overcoats, etc., intended for the Army of the United States by virtue of certain contracts with the Quartermaster Corps, United States Army, which contracts were entered into during the year 1917, and the first half of the year 1918. Said contracts provided that the plaintiff was to manufacture the said garments from materials furnished by the United States and the United States was to pay the price named in said agreement therefor. There was no stipulation in said contracts relative to facilities in the way of factories or store rooms to be required of plaintiff.

III

Prior to the date aforementioned, to-wit, July 15, 1918, plaintiff maintained several factories where it cut and manufactured the clothing it was obligated to manufacture under the contracts above mentioned. One plant was located on the third floor of a building at the corner of 8th and Arch streets, in the City of Philadelphia. The officers representing the United States objected to the use of this factory at 8th and Arch Streets on the ground of an alleged fire risk and practically required its discontinuance. Said officers of the United States also issued an order requiring plaintiff to install stock rooms [fol. 3] in all its said factories where government materials might be kept under lock in the custody of agents of the United States.

This requirement was practically impossible of fulfillment by plaintiff because if a storeroom of the kind required by the Government were installed, there would not have been enough room left in said factories to do the cutting necessary in the manufacture of said garments and, in addition to this, the requirement to discontinue its factory at 8th and Arch Streets would have curtailed seriously its production on its contracts and delayed their completion, whereas the Government was insisting that its production be increased. Nevertheless Government officers threatened that no further goods or supplies would be furnished unless such stock rooms were furnished. The contracts with the Government, above referred to, contained no requirement as to furnishing stock room or rooms by plaintiff. This requirement was made because officers of the United States found that a great deal of Government cloth was being stolen by dishonest contractors but no charge or imputation of dishonesty was made against plaintiff. On the contrary, plaintiff was on the list of approved Government contractors, its performance under its contracts having been in every way satisfactory to the Government, and was urged as a patriotic duty, to increase its output to the full extent of the potential capacity of its organization.

[fol. 4] IV

After the issuance of said requirements, plaintiff learned that it could lease for factory purposes for a period of not less than three years, the eighth floor of the Central Building, located at 44 N. 6th Street, Philadelphia, and that it could purchase sufficient machinery and fixtures to equip it as a going factory. To install its factory there would enable it to comply with the Government requirement of the installation of a stock room, to abandon its factory at 8th and Arch Streets, and would further enable it, as requested by the Government, to increase its output in supplying garments then sorely needed by the Quartermaster Corps to supply the needs of the Army in France. Considering the income it was then receiving from its contracts with the United States, plaintiff could not bear the expense of renting and equipping a new factory unless the United States should guarantee it sufficient contracts at a margin over cost of manufacture, completely to amortize the rental of said factory and the cost of machinery and equipment and the installation thereof, so as to insure a going factory.

Plaintiff communicated to Benedict J. Holden, Depot Quartermaster at Philadelphia, the fact of the opportunity to lease this factory site and by so doing and by installing and equipping its factory there to comply with the Government requirements and orders. Whereupon said Benedict J. Holden, Depot Quartermaster, [fol. 5] acting for and by authority of the Secretary of War, on or about July 15, 1918, directed plaintiff to lease this factory space and to install the necessary machinery and equipment to provide a going factory there and agreed further that the United States, through the Secretary of War, and the contracting officer, the Depot

Quartermaster, would award sufficient contracts to plaintiff which, at a fair margin over cost, would enable it to amortize the cost of said lease, machinery, and equipment, and agreed further that the United States would save the plaintiff from all or any loss which might result from the leasing of this factory space and the purchase of machinery and equipment and its installation therein, in the event sufficient contracts were not awarded to amortize the said factory.

V

Relying on said promise and agreement, and in compliance therewith, plaintiff did lease said factory and equipped the same for the work on the Government contracts at a cost of eighty-six thousand, one hundred twenty-eight dollars and fifty three cents ($86,128.53). Government officers did proceed to award plaintiff additional contracts as agreed upon up to November 11, 1918, when the armistice between Germany and the Allied Nations was signed. Thereupon [fol. 6] plaintiff's contracts were cancelled and no further contracts were awarded plaintiff, notwithstanding the agreement hereinbefore referred to and the fact that such contracts could have been awarded to plaintiff.

VI

Said factory was only adapted for the special Government work and could be used by the plaintiff for no other purpose; and after the discontinuance of said contracts by the Government it was necessary for plaintiff to dispose of said lease and equipment at the most favorable terms it could. Plaintiff endeavored in every way to mitigate the loss and disposed of said lease and equipment at the best price it could obtain for the same. Nevertheless, the loss in subletting said space and disposing of said equipment amounted to the sum of forty-four thousand, six hundred eighty-six dollars and twenty-eight cents ($44,686.28), after allowing the United States credit for all debts and set-offs. For this amount plaintiff prays judgment. A statement of costs to plaintiff, credits to the United States and the loss sustained by plaintiff is hereto attached marked "Exhibit A" and made part hereof.

VII

On the 10th day of June, 1919, plaintiff by mailing its statement of claim by registered mail, filed its claim for the above amount with [fol. 7] the Secretary of War, pursuant to the terms of the Act of March 2, 1919, which enabled the Secretary of War to adjust, pay, or discharge any agreement, express or implied, entered into during the emergency by an officer or agent of the United States acting under the authority of the Secretary of War, for the production, manufacture, sale, acquisition or control of equipment, materials or supplies, or for services or for facilities, or other purposes connected with the prosecution of the war, allowing reasonable remuneration

for expenditures and obligations or liabilities incurred in performing or preparing to perform the contract or order, where the agreement was performed in whole or in part and where the agreement was not executed in the manner prescribed by law. The War Department Claims Board, established pursuant to said Act, found that plaintiff was entitled to relief under said Act, but on appeal to the Secretary of War, relief was denied plaintiff.

VIII

Plaintiff brings this action under Section II of said Act of March 2, 1919, commonly known as the "Dent Act;" or, in event this court should determine that it has no jurisdiction under said Act, then under the general jurisdiction conferred on this honorable court by law.

[fol. 8] IX

No other action has been had on said claim in Congress or by any of the departments; no person other than plaintiff is the owner thereof or interested therein; no assignment or transfer of this claim, or any part thereof or interest therein, has been made; plaintiff is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets; the plaintiff has at all times borne true faith and allegiance to the Government of the United States and has not in any way voluntarily aided, abetted or given encouragement to rebellion against the said Government. The plaintiff is a citizen of the United States.

[fol. 9] Wherefore, plaintiff asks judgment against the United States in the sum of forty-four thousand, six hundred eighty-six dollars and twenty-eight cents ($44,686.28).

Jacob Reed's Sons, Inc., by Irving L. Wilson, President. (Corporate Seal.) Frank Davis, Jr., Attorney for Plaintiff, 222 Munsey Bldg., Washington, D. C. Wm. D. Harris, of Counsel.

Sworn to by Irving L. Wilson. Jurat omitted in printing.

[fol. 10] EXHIBIT "A" TO PETITION

Total outlay for machinery and equipment including sewing machines, pressing machines, cutting machines, motors, trucks, etc	$31,161.38	
Total outlay for carpenter work, electrical and gas installations, painting, etc	7,991.66	
Total obligations incurred on account of lease on 8th floor, Central Building, 44 No. 6th Street, Philadelphia	41,244.96	
Overhead, including insurance, drayage, and pay of employees during erection and dismantling of plant	3,175.47	
Carrying charges, being cost of financing the plant	2,555.06	
		$86,128.53
Credits allowed the Government—		
Salvage value of machinery, equipment and installations	$9,936.41	
Rent of premises for two months October and November 1918 (although productive opera-ing time was only five weeks)	2,137.50	
Amounts realized from subleasing	26,446.68	
Proportion of loss on machinery, etc., borne by claimant	2,921.66	
		41,442.25
Net loss for which claim is now made		$44,686.28

[fol. 11] II. GENERAL TRAVERSE—Entered May 18, 1922

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendant, a general traverse is entered as provided by Rule 34.

III. ARGUMENT AND SUBMISSION

On December 9, 1924, this case was argued and submitted on merits by Mr. Frank Davis, for the plaintiff, and by Mr. D. C. Williamson, for the defendant.

[fol. 12] **IV. Findings of Fact, Conclusion of Law, and Opinion of the Court by Hay, J.**—Entered January 5, 1925

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact

I

Plaintiff is and was during the period hereinafter mentioned a corporation organized and doing business under the laws of the State of Pennsylvania, with its principal office and place of business in Philadelphia in that State. Its principal business, in which it had been engaged since 1824, was the buying, manufacturing, and selling of clothing and officers' and cadets' uniforms.

II

In April, 1917, plaintiff took a trial contract for manufacturing uniforms for the United States Army. It demonstrated its ability to manufacture such uniforms to the satisfaction of the Government and was given further contracts from time to time. Until shortly prior to July 15, 1918, plaintiff in manufacturing such Army uniforms for the Government was using the fifth floor of its building at 1424-1426 Chestnut Street, Philadelphia, for the cutting work on uniforms and for other work necessary in such manufacture, three floors in a building at Broad and Spring Garden Streets in Philadelphia, one floor in a building at Eighth and Arch Streets in said city, one floor at Broad and South Streets in said city, and a factory at Hampton, N. J., all of which space was used by it exclusively in the manufacture of Government uniforms. The manufacture of such uniforms was entirely different from the regular business of plaintiff.

There was no provision in any of the said contracts with the Government relative to the size or kind of facilities in the way of factories or storerooms that would be required of plaintiff.

Prior to July 15, 1918, plaintiff had demonstrated its ability to carry out its contract for the manufacture of uniforms to the fullest satisfaction of the Government, and was regarded as one of the best contractors with which the Government was dealing.

[fol. 13]

III

Early in the summer of 1918 the situation with regard to clothing and uniforms for the soldiers of the Army of the United States was critical. It was necessary to arrange immediately to provide uniforms for 4,000,000 men by the 1st of July, 1919.

In the city of Philadelphia the situation as to the manufacture of such uniforms at that time was very unsatisfactory to the Government. The production was not up to the minimum requirements. Contracts were scattered among numerous contractors, and there was much dishonesty, waste, and inefficiency.

In April, 1918, George W. Goethals, Major General, Assistant Chief of Staff, Division of Purchase, Storage, and Traffic of the United States Army, having charge of the procurement of all standard supplies for the War Department, assigned Benedict M. Hodlen,

a civilian, as depot quartermaster at Philadelphia to increase production and to eliminate dishonest and unsatisfactory contractors.

As such depot quartermaster it was his duty and he had authority to do everything possible to expedite production of uniforms to meet the program which had been laid out for the United States Army.

Mr. Holden urged plaintiff in every way to increase its production, as the same was so satisfactory to the Government. He also ordered all contractors to install storerooms at the places where the cutting was done in order that material belonging to the Government could be kept under lock and key. He also required that the factory of the plaintiff at Eighth and Arch Streets be discontinued on account of the fire risk.

It was impossible for plaintiff to install a storeroom on the floor where the cutting was then being done by it, 1424 Chestnut Street, without decreasing its production which the Government was demanding it to increase. To discontinue its factory at Eighth and Arch Streets on account of fire risk or for any other reason would also seriously cut down its production of uniforms instead of increasing the same, as demanded by the Government. The only way it could meet the Government's demand as to increased production, providing a storeroom and discontinuing the factory at Eighth and Arch Streets would be by securing sufficient space in some other building to concentrate its manufacturing on Government work in such space. Plaintiff being desirous of complying with the demands of the Government as to increased production, as well as its orders as to the stock room and discontinuance of its factory at Eighth and Arch Streets, made every effort to find suitable space in Philadelphia for continuing its work. Plaintiff ascertained that it could lease the entire eighth floor of a building at 45-50 North Sixth Street, which would be admirable for the manufacture of uniforms, in that it would afford space for the entire manufacture, provide the storeroom which the Government required, and enable it to entirely discontinue its Eighth and Arch Streets factory, at the same time materially increasing its production of uniforms. This space could only be secured by executing a lease for three years. It was necessary also, if this space was to be utilized so as to increase the production as required by the Government, to install the necessary and proper machinery.

[fol. 14]

IV

On or about July 15, 1918, the plaintiff reported the above facts to Benedict M. Halden, depot quartermaster at Philadelphia, and stated to him that the taking over and equipment of the portion of the building at North Sixth Street would involve the expenditure of a considerable sum of money, and that it did not feel justified in going ahead without some definite assurances on the part of the depot quartermaster that it would receive a sufficient number of contracts to at least compensate it for the outlay and obligations which it would have to incur. The depot quartermaster wanted to know what it would cost to rent the portion of the building and to

equip it. The plaintiff told him that such a plant would cost from $75,000 to $100,000. The depot quartermaster urged the plaintiff to increase its capacity and stated that he was satisfied that the plaintiff would receive contracts from the United States Government sufficient to compensate it for making the investment. The plaintiff suggested that the war might end. The depot quartermaster then said, "If the war stops, we will be obliged to keep an army of occupation in Europe for some time to come, and this army of occupation will need uniforms." He further stated that contracts would be placed with the plaintiff which would fully reimburse it for its proposed expenditure.

Thereupon plaintiff executed the lease for said space and proceeded as rapidly as possible to adequately equip the same. Said factory was completed and ready for operation about the middle of September, 1918. It was inspected and approved by officers connected with the Philadelphia depot both during construction and after completion. As soon as it was completed the Government immediately awarded contracts to the plaintiff, and said factory was used in the manufacture of uniforms from its completion, about the middle of September, up until the date of the armistice, when plaintiff was ordered to stop all manufacturing. Thereafter, although plaintiff was ready, willing, and able to devote the capacity of said factory to the manufacture of uniforms for the Government, and requested that additional contracts be given to it, no further contracts were given to plaintiff.

After the armistice plaintiff endeavored to have the Government take said factory off its hands and pay for its losses. The Government failing and refusing to do so, plaintiff proceeded to dispose of the lease and of the equipment at the best price it could obtain for the same. The total cost of the factory, including the lease, was $86,128.53; the amount realized by the plaintiff from the sale of said lease and equipment was $42,372.29; the loss to the plaintiff was $43,756.24.

On or about the 10th day of June, 1919, plaintiff filed claim for $44,686.28 with the Secretary of War, pursuant to the terms of the act of March 2, 1919, commonly known as the Dent Act. The War Department Claims Board, established pursuant to said act, found that plaintiff was entitled to relief under said act, but on appeal to the Secretary of War relief was denied plaintiff. Thereafter plaintiff brought this action in this court on said claim.

[fol. 15] VI

All matters connected with the origination, making, and performance of all contracts of the plaintiff for the manufacture of uniforms were taken up with the depot quartermaster at Philadelphia, and plaintiff had no dealings with regard to any of said contracts with any other official. All such contracts were executed on behalf of the Government by the officer designated in the contract as con-

tracting officer and designated by the depot quartermaster at Philadelphia.

On or about May 8, 1918, the following letter was received by the plaintiff from the depot quartermaster's office:

War Department, Office of the Depot Quartermaster

2620 Grays Ferry Road,
Philadelphia, Pa., May 8, 1918.

Please send reply in duplicate, quoting No. 421.2—174—S. & E. D.—M. B. and date of the letter.

From: Depot Quartermaster, Philadelphia, Pa.

To: Jacob Reed's Sons, 1424 Chestnut Street, Philadelphia.

Subject: Contracts.

1. In accordance with letter received from the office of the Quartermaster General, manufacturing branch, dated May 6, you are informed that all correspondence and all matters pertaining to your contracts, or any business you may have with the Quartermaster Corps in reference to contracts, should be taken up with this office, and at no time will it be necessary for you to correspond with the Quartermaster General's office unless upon our advice.

2. The orders from Washington in this matter are explicit, and it is therefore requested that you take immediate note of same and comply accordingly.

By authority of the depot quartermaster.

(Signed) S. P. Weinberg. A. S. P. Weinberg, Captain, Q. M. R. C., Asst. to D. Q. M."

VII

Benedict M. Holden, depot quartermaster at Philadelphia, while acting as such, was an agent of the Secretary of War.

Conclusion of Law

Upon the foregoing findings of fact the court decides as a conclusion of law that the plaintiff is not entitled to recover, and its petition must be, and the same is hereby, dismissed. Judgment will be entered against the plaintiff in behalf of the United States for the cost of printing the record in this case, the amount thereof to be ascertained by the clerk and to be by him collected according to law.

Opinion

Hay, Judge, delivered the opinion of the court.

The plaintiff relies upon the provision of the Dent Act (40 Stat. 1272.) Section 1 of that act provides as follows:

[fol. 16] "That the Secretary of War be, and he is hereby, authorized to adjust, pay, or discharge any agreement, express or implied, upon a fair and equitable basis that has been entered into in good faith during the present emergency and prior to November 12, 1918, by any officer or agent acting under his authority, direction, or instruction, or that of the President, with any person, firm, or corporation for the acquisition of lands, or the use thereof, or for damages resulting from notice by the Government of its intention to acquire or use said lands, or for the production, manufacture, sale, acquisition or control of equipment, materials or supplies, or for services, or for facilities, or other purposes connected with the prosecution of the war, when such agreement has been performed in whole or in part, or expenditures have been made or obligations incurred upon the faith of the same by any such person, firm, or corporation, prior to November 12, 1918, and such agreement has not been executed in the manner prescribed by law: Provided, that in no case shall any award either by the Secretary of War or the Court of Claims include prospective or possible profits on any part of the contract beyond the goods and supplies delivered to and accepted by the United States and a reasonable remuneration for expenditures and obligations or liabilities necessarily incurred in performing or preparing to perform said contract or order * * *."

The plantiff claims under what it alleges was an express contract between it and Benedict M. Holden, depot quartermaster at Philadelphia, that this contract was made in July, 1918, and that said Holden was "an officer or agent acting under the authority, direction, or instruction of the Secretary of War." The terms of this contract are alleged to have been that the plaintiff on its part was to rent and equip a floor of a building in Philadelphia for the production of Army uniforms, and that the depot quartermaster would see to it that the plaintiff would receive contracts from the United States in sufficient quantity to compensate it for any loss which it might incur by reason of such rental and equipment.

The facts are that the plaintiff, upon being urged by the depot quartermaster to increase its facilities for the production of Army uniforms, advised the depot quartermaster that it could only do so by renting a floor of a building in Philadelphia; that three years was the shortest term for which it could rent the building; and that the rent and the cost of equipment would be from $75,000 to $100,000, and that the plaintiff would not incur this cost unless it could be assured that it would receive a sufficient number of contracts to compensate it for the outlay and obligations so incurred. The depot quartermaster urged the plaintiff to increase its capacity, and stated that he was satisfied that the plaintiff would receive contracts from the United States Government sufficient to compensate it for making the investment. It was suggested by the plaintiff that the war might end. The depot quartermaster answered that if it did the United States will be obliged to keep an army of occupation in Europe for some time to come, and this army would need uniforms. As a result of this conversation with the depot quartermaster the

plaintiff proceeded to rent the building and to equip it for the manufacture of uniforms for the United States Army. The building was ready for work about the middle of September, 1918, and the plaintiff was given contracts for the manufacture of uniforms. [fol. 17] Before these contracts were completed the armistice was entered into on November 11, 1918, and a few days thereafter the contracts which had been awarded to the plaintiff were cancelled. As a result the plaintiff discontinued its work in the building so rented and proceeded to dispose of the lease and of the equipment at the best price it could obtain for the same.

The total cost of the factory, including the lease, was $86,128.53; the amount realized by the plaintiff from the sale of said lease and equipment was the sum of $42,372.29; and the loss to the plaintiff upon the transaction was the sum of $43,756.24. And this sum, the plaintiff alleges, the United States must pay by reason of the promises made to it by the depot quartermaster at Philadelphia.

It does not seem to us that there has been any contract proved between the parties, either express or implied. The promise of the officer to supply the plaintiff with future contracts sufficient to compensate it for the expenditure of money for equipment and rent is not such a promise as the Dent Act contemplates. The circumstances surrounding this transaction are such as to lead to the conclusion that the plaintiff was relying on the promise made to it for obtaining future contracts in the event of the continuance of the war, or if the war did not continue then on the event of the United States maintaining an army of occupation in Europe. In either case the plaintiff proceeded upon promises made to it by one who had no authority to obligate the United States to a continuance of work for which the Government might have no use. The plaintiff, in making the expenditure, relying upon the opinion of the depot quartermaster, took the chance that the war would continue, or that if it did not, there would still be the chance of using the building which it rented and equipped. There was no duress, no order directing the plaintiff to rent and equip the building, and so far as the record discloses there was no authority lodged in the depot quartermaster which authorized him to enter into a contract with the plaintiff or anyone else to rent and equip that or any other building.

The plaintiff was bound to know and to take notice of the limited authority of the officer with whom it was dealing. Baltimore & Ohio R. R. Co. v. The United States, 57 C. Cls. 140, 150. There are no circumstances here which can be held to relieve the plaintiff from its responsibility. It is said by the Supreme Court in the case of Baltimore & Ohio R. R. Co. v. United States, 261 U. S. 592, 596: "The act was intended to remedy irregularities and informalities in the mode of entering into such agreements; not to enlarge the authority of the agents by whom they were made. To entitle the claimant to compensation under such an agreement it is essential that the officer or agent with whom it was entered into should not merely have been holding under the Secretary of War or the President but that he should have been acting within the scope of his authority." And the court goes on to say in the same opinion: "It

was not intended * * * that an agreement into which he entered, although beyond his authority, should become binding upon the Government because it was made in the form of an express agreement not executed within the legal manner or of an implied agreement merely—that is, that his authority should be enlarged by the irregularity or informality with which it was exercised."

[fol 18] It does not appear that the depot quartermaster had any authority to enter into this agreement. He had authority to expedite the production of uniforms and clothing which were being manufactured by contractors in Philadelphia. But from that could not be implied an authority to rent and equip buildings. And in this case it appears that the officer entered into no contract as to the amount of the rent and the cost of the equipment, but without knowing what the rent and costs were gave assurance to the plaintiff that future contracts would be given it to compensate it for its outlay, whatever that might be. We do not feel that we can imply that the officer had any such authority. To do so would be giving an interpretation to the Dent Act which is directly in the face of the decision of the Supreme Court of the United States above quoted.

The petition of the plaintiff must be dismissed. It is so ordered.

Graham, Judge; Downey, Judge; Booth, Judge; and Campbell, Chief Justice, concur.

[fol. 19]

V. Judgment

At a Court of Claims held in the City of Washington on the 5th day of January, A. D. 1925, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises, find in favor of the defendant and do order and adjudge that the plaintiff, as aforesaid, is not entitled to recover and shall not have and recover any sum in this action of and from the United States; and that the petition herein be and it is hereby dismissed: And it is further ordered and adjudged that the United States have and recover of and from the plaintiff, as aforesaid, the sum of Three hundred and eighty-three dollars and thirty cents ($383.30), the cost of printing the record in this court, to be collected by the Clerk, as provided by law.

VI. Proceedings After the Entry of Judgment

On February 27, 1925, the plaintiff filed a motion for a new trial.

[fol. 20] On March 14, 1925, the defendant filed a motion for amended findings of fact.

VII. Order Overruling Motions for New Trial and for Amendment of Findings—March 16, 1925

It is ordered by the Court this 16th day of March, 1925, that the plaintiff's motion for new trial and the defendant's motion for amendment of findings be and they severally are overruled.

VIII. Petition for Appeal—Filed March 31, 1925

From the judgment rendered in the above-entitled cause on the 5th day of January, 1925, in favor of defendant, and the overruling of the motion for a new trial on the 16th day of March, 1925, the plaintiff by its attorney, on the 31st day of March, 1925, makes application for, and gives notice of, an appeal to the Supreme Court of the United States.

Frank Davis, Jr., Attorney for Plaintiff. Wm. D. Harris, of Counsel.

[fol. 21] IX. Order Allowing Appeal

It is ordered by the Court this 6th day of April, 1925, that the plaintiff's application for appeal be and the same is allowed.

In Court of Claims

[Title omitted]

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact, conclusion of law and opinion of the court by Hay, J; of the judgment of the court; of the proceedings after entry of judgment; of the order of court entered March 16, 1925; of the plaintiff's application for appeal; of the order of the court allowing plaintiff's application for appeal.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this 10th day of April, A. D., 1925.

F. C. Kleinschmidt, Assistant Clerk Court of Claims. (Seal Court of Claims.)

Endorsed on cover: File No. 31,031. Court of Claims. Term No. 359. Jacob Reed's Sons, Inc., appellant, vs. The United States. Filed April 14th, 1925. File No. 31,031.